

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	§	
	§	
Tariff filing to present to the Illinois Commerce	§	DOCKET NO. 13-0387
Commission with an opportunity to consider	§	
Revenue neutral tariff changes related to rate	§	
Design authorized by subsection 16-108.5(e)	§	
Of the Public Utilities Act	§	

**CHICAGO TRANSIT AUTHORITY'S
REPLY HEARING BRIEF (Rev.)**

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REPLY HEARING BRIEF**

The Chicago Transit Authority (CTA) replies to portions of Commonwealth Edison Company (ComEd), the Commercial Group, and the Illinois Commerce Commission (ICC or Commission) Staff (ICC Staff)'s hearing briefs as follows:

II. COST OF SERVICE AND INTERCLASS ALLOCATION ISSUES

C. Potentially Contested Issues

1. Cost Allocation of Primary/Secondary Distribution System

**c. Cost Allocation of Facilities that Operate Below 12kV –
Railroad Delivery Class**

The costs associated with facilities that operate below 12 kV must be eliminated from the embedded cost of service study (ECOSS) approved in this docket because the facilities are neither used nor useful to provide service to the class and because the Commission itself ordered in the last rate case that these costs be deleted from the Railroad Class. ComEd's inclusion of the 4 kV costs in some of the ECOSSes it filed violates the Commission's order and must be rejected. Furthermore, the ICC Staff's position that the order to delete the 4 kV costs from the Railroad Class was not clear is wrong.

In the introduction to its brief, ComEd states that it generally was not taking a position on rate design issues except for "requests to reverse recent Commission decisions." ComEd Brief at 2. However, reversing a recent Commission decision is precisely what ComEd proposes when it

fails to delete the 4 kV costs from the Railroad Class in all of the ECOSSES it presents in this Docket. ComEd presents in its Rate Design Investigation (RDI) ECOSS a study that fails to delete the 4 kV costs from the Railroad Class. Then using the RDI ECOSS as the base case, ComEd presents a series of ECOSSES, only one of which properly deletes the 4 kV costs from the Railroad Class (ComEd Ex. 3.12). By deleting the 4 kV costs in *only one* ECOSS, ComEd subverts the Final Order in Docket No. 10-0467, in which the Commission ordered ComEd to delete from the Railroad Class the costs for facilities below 12 kV.

In the Docket No. 10-0467 Final Order, the Commission found with regard to ComEd providing service to the Railroad Class at 4 kV:

The Commission additionally notes that even ComEd's witness Heintz testified that he knew of no 4 kV line that serves the Railroad Class. In fact, the evidence indicates that if the Railroad class *did* take service at 4 kV, it would be impracticable and very costly, as all of the 4 kV equipment that would have to be installed inside and upstream of the CTA substations would have to be sized to handle at least three times the electric current that is presently supplied through the existing 12 kV equipment. (CTA Ex. 4.0 at 3). Based on the evidence provided, it is clear that the Railroad Class does not, and probably will never, take service at 4 kV.

The question then becomes whether this fact justifies requiring ComEd to exclude 4 kV costs in a future cost of service study. ComEd argues, essentially, that its customers, in general, must pay a percentage of the whole of its costs, as they have usage of the system as a whole. This contention is not without merit, as, at some point, exclusion of certain asset costs for a particular group of customers could result in a distortion of the price that all customers must pay to benefit from the use of a utility.

However, the Commission need not decide this issue with respect to the Railroad Class. ComEd has had, for many decades, a unique relationship with the CTA and Metra. Proof of this unique relationship can be found in the fact that ComEd has contracts with these two entities. These contracts define the relationship between ComEd and these two entities. This is true because, necessarily, there is no point in entering into a contract if a tariff governs all of the terms and conditions between the parties. Also, ComEd uses railroad-owned facilities to supply electricity to other customers. In fact, as is set forth elsewhere herein, in some instances, ComEd is dependent upon the railroads' facilities in order to supply electricity to other, non-railroad customers. The Railroad Class is truly a unique class, which has been segregated for decades. It should be segregated here.

The Commission also notes that, while ComEd maintains that it would be difficult and costly to segregate-out the 4 kV costs from the Railroad Class, this class has but two customers. And, the load-flow study, presented herein, should guide it. The Commission therefore directs ComEd to work with Metra and the CTA, and Staff if appropriate, to study, define, and delete from the costs assigned to the Railroad Class the costs that are associated with the 4 kV facilities that are not used to serve the Railroad Class. Pursuant to that effort, ComEd shall develop a new embedded cost of service study for the next rate case that excludes the costs that are associated with facilities below 12 kV from the Railroad Class. This study shall be part of ComEd's initial rate case filing. Failure to comply with any portion of this directive could subject ComEd to the penalties provided in the Public Utilities Act for failure to comply with a Commission Order.

Final Order, Docket No. 10-0467 at 190-191.

A fair reading of the Final Order's plain language is that the Commission explicitly found that there are no 4 kV facilities of ComEd that serve the Railroad Class, that 4 kV costs must be segregated out and deleted from the Railroad Class, and that ComEd's ECOSS in this docket should exclude "costs that are associated with facilities below 12 kV from the Railroad Class." The failure of ComEd to comply with the order—as ComEd has failed to do in this docket—could subject ComEd to penalties under the Public Utilities Act. It is disingenuous at best for ComEd to file an RDI ECOSS and other ECOSSES that directly defy the Commission's Final Order in Docket No. 10-0467.

The ICC Staff also ignores the explicit language in Docket No. 10-0467 (as set forth above), arguing that "[t]here appears to be some disagreement over whether the Commission ordered [in Docket No. 10-0467] the costs associated with 12 kV and below to be removed from the Railroad class going forward or whether ComEd was to provide an ECOSS with the pertinent information removed from the Railroad class for the Commission's consideration." ICC Staff Brief at 20-21. There is no disagreement. The language in the Final Order is clear. It mandates compliance by ComEd and subjects ComEd to penalties for non-compliance. The language is definitive that the Railroad Class does not use 4 kV facilities. The language states without

equivocation that the 4 kV costs are to be segregated and excluded from the costs assigned to the Railroad Class.

Because of this Commission mandate, the ECOSS used as the basis for setting rates in this docket must delete and exclude 4 kV costs from the Railroad Class. The only presented ECOSS that does this is ComEd Ex. 3.12. The ICC Staff Brief is wrong at 6 when it states that “if the Commission were to decide to eliminate the 4 kV costs for the Railroad class only, there is not a proposed ECOSS available that identifies those results.” The costs for the Railroad Class *without* the 4 kV costs are identified in ComEd Ex. 3.12 because that ECOSS excludes 4 kV costs for the Railroad Class. ComEd Ex. 3.12 should be used in this Docket for setting rates for the Railroad Class.

The ICC Staff’s argument is contrary to the Final Order in Docket No. 10-0467, violates cost causation principles by requiring the Railroad Class to pay for facilities that it does not and never will use, and is simply wrong in its conclusion as to the existence of an ECOSS that specifically excludes 4 kV costs for the Railroad Class. ComEd Ex. 3.12 provides that ECOSS.

IV. RATE DESIGN

C. Potentially Contested Issues

2. Non-Residential

b. Movement Toward ECOSS-Based Rates

The Commission in Docket No. 10-0467 established an orderly process to move the Railroad Class rates to cost-based rates, recognizing “there are public interest concerns regarding providing affordable public transportation, and the benefits that mass transit provides to the overall reduction in energy consumption and adverse environmental impacts.” Final Order, Docket No. 10-0467 at 259-260.

The Commercial Group’s brief ignores Docket No. 10-0467, both as to the need for an orderly process and as to the public interest concerns for mass transit. Instead, the Commercial

Group focuses on the earlier 2007 ComEd rate case in an attempt to short-circuit the Commission's orderly process. The Commercial Group also fabricates the CTA's position regarding movement to cost-based rates.

As fully discussed in the CTA's Initial Brief, the Commission approved a ten-step process for the Railroad Class to move its rates to what ComEd calculates as cost-based. The Wal-Mart witness for the Commercial Group did not even bother to read the Final Order in Docket No. 10-0467 when he prepared his testimony but instead focused only on the final order in Docket No. 07-0566, which predated the Commission's order regarding the proper process for moving to cost-based rates. Tr. at 311/18-23. Instead, Wal-Mart, through the Commercial Group, argues that there should be no "public interest concerns" when setting rates for the Railroad Class. Commercial Group Brief at 11. This position ignores the Commission's explicit finding that, when setting rates for the Railroad Class, public interest concerns must be recognized because of the contributions mass transit makes to reducing overall energy consumption.

In addition, the Commercial Group, without any citation to the record, creates out of whole cloth the statement that "So in the end, only CTA/Metra opposes movement of non-residential class rates to class cost, and does so only with respect to Railroad rates." Commercial Group Brief at 9. In its brief, the CTA stated that any movement to ComEd's calculated costs of service for the Railroad Class should continue to follow the 10-step method for the Railroad Class adopted in Docket No. 10-0467. CTA Initial Brief at 9-12. Therefore, the Commercial Group's characterization of the CTA's position is without any factual support and is contrary to the CTA's stated position as reflected in its Initial Brief. For any movement toward ComEd's

calculated costs, the Commission should continue the 10-step process for the Railroad Class and reject the Commercial Group's attempt to subvert the process.

5. Other Issues

The Railroad Class proposed that the ICC commission a study group comprised of the Railroad Class, ComEd, and, if it wants to participate, the ICC Staff to explore the appropriateness of distinguishing the Railroad Class's costs by geographic area. ComEd, the Commercial Group, and the ICC Staff generally oppose the creation of such a study group focused on cost causation.

The Railroad Class proposed the study because there are only two members of the Railroad Class and because they take delivery only in Cook and Will Counties for traction power at 12.5 kV. In the past, ComEd and the Railroad Class have worked through a study process to determine the load that flows through the traction power substations to feed other customers, the end result of which was presented to the Commission in an earlier docket. The success of the study process led the Railroad Class to suggest a similar study as a way to explore whether there are any cost causation impacts on ECOSS results given the Railroad Class's limited geographic service area.

None of the parties opposing the study focuses on the Railroad Class's proposal. Instead, ComEd lumps the proposal with other study requests and then does not address why a geographic study for a class made up of only two customers would not be appropriate. ComEd Brief at 10-15. Unlike the studies requested by other parties, the Railroad Class proposal is limited and specific. Thanks to the earlier power flow studies and the study to eliminate 4 kV facilities from the Railroad Class's rates, the contours of the study are easily identified. The ICC Staff's objects to the study arguing that the study would be "allocation by exclusion" and it

might invite other customer groups to request a similar study. ICC Brief at 11. This argument is without merit because the study proposed by the Railroad Class is a study of an entire class, not a group of customers. The Railroad Class knows of no other class that is comprised of only two members, whose service is restricted to a geographic area and who take delivery at one voltage level. The Commercial Group parrots the ICC Staff argument that any group of customers could request a similar study. Commercial Group Brief at 6. However, as noted, this is not a study for a group of customers but rather a study for an entire class focused on a specific cost causation issue.

The Commission should approve the Railroad Class's request for the geographic study.

VI. Other

C. Railroad customers – Utilization of Railroad Customers' Facilities Report

ComEd provided the Commission with a report on how ComEd's delivery of power to the Railroad Class's traction power substations could be modified to reduce ComEd's dependence on the CTA's and Metra's facilities to serve other ComEd customers. This report fulfilled the requirement imposed on ComEd in Docket No. 10-0467. The only party urging any action on the report is the ICC Staff. The ICC Staff asks the Commission to order ComEd to make immediately certain improvements to its system in order to eliminate ComEd's dependence on facilities owned by the CTA and Metra.

The key issue here is timing. For decades, ComEd has used power that flows through Railroad Class customer-owned traction power substations to serve other ComEd customers. The ICC Staff argues that this usage by ComEd of the CTA and Metra equipment is "a poor utility practice." ICC Staff Brief at 49. The record contradicts the ICC Staff. For decades, the current configuration has worked. Bachman Rebuttal, CTA/Metra Ex. 2.0 at 4/52. ComEd stipulated that it has "encountered no adverse effects to reliability attributable to the current

configuration of railroad traction power stations.” Tr. at 384. Because the operation of the CTA’s rapid transit trains depends upon a reliable electric supply, the CTA urges caution in making changes to the system without careful review and planning. As the CTA’s Initial Brief shows, the evidence supports the CTA’s position that any modifications to the delivery of traction power should be made only as facilities are changed or upgraded, assuming there is economic justification for doing so. CTA Initial Brief at 12-17. As a result, the Commission should not require ComEd to make the changes to its system without such careful planning. Instead, the CTA believes changes should be made in measured steps so that any potential adverse effects can be identified and corrected.

Even if the Commission were to order ComEd to immediately upgrade its system, the process would need to take place over at least two years. Moreover, the upgrades the ICC Staff proposes would not eliminate ComEd’s use of the CTA facilities to serve other customers. Therefore, it would be inappropriate at this time to make any modifications to the existing credit in the ECOSS that compensates the CTA and Metra for ComEd’s use of the Railroad Class customers’ facilities to serve other ComEd customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard C. Balough, do hereby certify that a true and correct copy of the Chicago Transit Authority's Reply Hearing Brief Rev. was sent via electronic means to the parties listed on the eDocket service list on this 25th day of October 2013.

_____/s/ *Richard C. Balough*_____
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